

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 772 OF 2006

SAU. VIJAYA MADHUKAR DESHPANDE ..APPELLANT

V/S

MATA BALAK UTKARSHA PRATISTHAN

& ORS.

..RESPONDENTS

MR. A.P. KULKARNI FOR APPELLANT.
MR. C.G. PATIL I/B MR. S.S. PATWARDHAN FOR RESPONDENT
NOS. 1 & 2.

CORAM: V.M. KANADE, J.

DATE : 12TH OCTOBER, 2007.

P.C.

1. Heard learned counsel for the Appellant and the Respondents. The Appellant was working in the Pre-Primary school of the Respondent No. 1 Society. Subsequently she was suspended. The Appellant filed a suit against the order of suspension vide Regular Civil Suit No. 98 of 1986. During the pendency of the suit an Enquiry Committee was appointed and the services of the Appellant was terminated from the Respondent No. 1 School. Thereafter an application for amendment was filed by the Appellant. The Respondent also filed their reply to the amendment application. Both the parties

led the evidence. The Appellant brought on record the necessary documents regarding her termination. The Respondent also brought on record the enquiry report and other related documents. The trial court proceeded to decide the suit on the basis that the amendment application has been allowed. It is evident from the fact that the suit was decreed and the Appellant was directed to be reinstated with backwages. Against this judgment and decree the Respondent filed an Appeal before the Additional District Judge, Pandharpur and it was inter alia contended that though specific relief was not claimed by the Appellant/Complainant the trial court has granted the said relief. The Appeal Court on this ground set aside the judgment and decree of the trial court. It is submitted by the learned counsel appearing on behalf of the Respondent that the trial court proceeded on the basis that the amendment application was allowed and accordingly decreed the suit. The Respondent on the other hand submits that no steps were taken by the Appellant for amending the plaint. Therefore no relief should be granted in favour of the Appellant. After the Second Appeal was filed the Appellant has filed a Civil Application in which the Appellant seeks prayer for amendment of the plaint. In my view at this stage the Civil Application filed by the Applicant cannot be granted.

2. However considering the controversy between the parties, the matter is remanded back to the trial court with direction to consider the application for amendment filed by the Appellant herein and consider the objection raised by the Respondent to the amendment application and decide the same on merits and in accordance with law. It is clarified that the Respondent shall be permitted to file additional reply to the amendment application. All the contentions raised by the Appellant and the Respondents are kept open. The impugned orders passed by the Appeal Court and the Trial Court are set aside. The matter is remanded back to the trial court. The trial court shall decide the said amendment application and thereafter the suit shall be decided expeditiously within a period of six months from today. If the amendment application is allowed the Respondent is permitted to file the written statement within two weeks thereafter. The parties to lead additional evidence if necessary. With these directions the Second Appeal is disposed of.

3. The learned counsel appearing on behalf of the Appellant submits that Appellant shall not claim reinstatement to primary or secondary school and

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restrict his claim of reinstatement to pre-primary school in view of the Full Bench Judgment of this court on that point.

(V.M. KANADE, J)